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an introduction

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NATIONAL ENERGY BOARD

AN INTRODUCTION

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Our purpose is to make decisions that are fair, objective and respected.

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WHAT IS THE NATIONAL ENERGY BOARD?

The National Energy Board (the NEB or the Board) is an independent federal regulatory agency that was established in 1959. The Board regulates the following specific aspects of the energy industry:

- the construction and operation of interprovincial and international pipelines;
- pipeline traffic, tolls and tariffs;
- the construction and operation of international and designated interprovincial power lines;
- the export and import of natural gas;
- the export of oil and electricity; and
- Frontier oil and gas activities.

Other responsibilities include:

- providing, where the Board has expertise derived from its reglatory functions, energy advice to the Minister of Natural Resources Canada;
- carrying out studies and preparing reports when requested by the Minister;
- conducting studies into specific energy matters;
- holding public inquiries when appropriate; and
- monitoring current and future supplies of Canada's major energy commodities.

In addition to its responsibilities under the *National Energy Board Act* (NEB Act), the Board also has responsibilities under the *Canada Oil and Gas Operations Act*, the *Canadian Environmental Assessment Act*, the *Canada Labour Code*, the *Northern Pipeline Act*, and certain provisions of the *Canada Petroleum Resources Act*. As a result of the *Canada Transportation Act*, which came into effect on 1 July 1996, the Board's jurisdiction has been broadened to also include pipelines that transport commodities other than oil or natural gas.

The Board's corporate purpose is to make decisions that are fair, objective and respected. This principle guides the Board in carrying out and interpreting its regulatory responsibilities. The Board is accountable to Parliament, to which it reports, through the

Minister of Natural Resources Canada.

The Board deals with approximately 750 applications annually. For major applications, the Board holds public hearings where applicants and interested parties can participate. These hearings can be either written or oral, and are usually held at locations across Canada where there is a particular interest in the application and which will be most affected by the Board's decision. Normally, a panel consisting of three Board Members is assigned to hear applications.

The Board operates as a court of record, very similar to a civil court. Its powers include the swearing in and examination of witnesses and the taking of evidence. Before a hearing, individuals, interest groups, companies and other organizations are given an opportunity to register as intervenors or interested parties and in this way actively participate in the process.

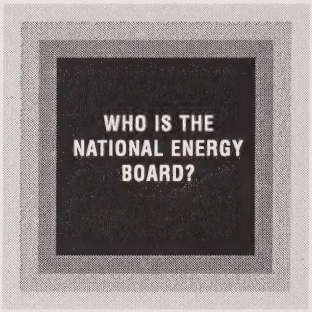
WHY WAS THE NATIONAL ENERGY BOARD CREATED?

In the early post-war years, western Canadian oil and gas resources were discovered and developed for inter-provincial and international use. Important policy issues arose regarding the conditions for the construction of new pipelines and the approval of long-term exports, particularly of natural gas.

The 1957 Diefenbaker administration set up a Royal Commission on Energy to examine whether a national energy board should be created and what authority it should exercise. The Commission in 1959 recommended that a national board be established, although with limited authority. Prior to the tabling of its report, the 1955 Royal Commission on Canada's Economic Prospects had also recommended that a national energy authority be created to regulate energy exports.

The government acted promptly on the Commission's recommendations, drafting a legislative proposal and introducing it to Parliament in May 1959. As a result, *the National Energy Board Act* was proclaimed in November of the same year. The Act transferred to the new Board responsibility for pipelines from the Board of Transport Commissioners and responsibility for oil, gas and electricity exports from the Minister of Trade and Commerce. In addition, it granted the Board responsibility for regulating tolls and tariffs and defined its jurisdiction and status as an independent court of record - an important new factor.

Since then, the Board has developed its expertise on energy matters and enjoys a respected national and international reputation. In 1991, the Board relocated from Ottawa, Ontario to Calgary, Alberta. In 1994, legislative amendments expanded the Board's jurisdiction to include decision making authority for Frontier lands not administered through provincial/federal management agreements.



Under the NEB Act, up to nine Board Members may be appointed by the Governor in Council. A Member is appointed initially for a seven-year term. Reappointment may be for seven years or less until the age of seventy. In addition, up to six temporary Board Members may also be appointed subject to terms and conditions set out by the Governor in Council. Members typically have a wide range of government and energy industry experience.

The Governor in Council designates the Chairman and Vice-Chairman of the Board from among the Members. The Chairman is the chief executive officer.

Members are assisted by approximately 280 employees who possess the diverse skills required to support the work of the Board. Employees may be financial analysts, computer specialists, economists, engineers, environmentalists, geologists, geophysicists, lawyers, human resource and library specialists or administrative staff.



The Construction and Operation of Pipelines and Power Lines

Pipelines

Interprovincial and international oil and gas pipelines and additions to existing pipeline systems under federal jurisdiction require the Board's approval before they may be built. Public oral or written hearings are held for pipeline construction applications exceeding 40 kilometres in length or any other applications at the discretion of the Board. Pipelines which lie completely within the borders of a single province are regulated by that province's regulatory body.

In determining whether a pipeline project should proceed, the Board reviews, among other things, its economic, technical and financial feasibility, and the environmental and socio-economic impact of the project.

To ensure that engineering, safety and environmental requirements are met, the Board audits and inspects the construction and operation of pipelines. Since February 1987, Board inspectors have also been responsible for enforcing Part II of the *Canada Labour Code*, applying to the occupational safety and health of pipeline workers in the field.

The NEB shares responsibility with the Transportation Safety Board for incident investigation. The NEB investigates pipeline incidents to determine whether its regulations have been followed and if those regulations may need to be changed. The Transportation Safety Board investigates the cause and contributing factors. The NEB also monitors excavation activity by third parties near pipelines to ensure compliance with existing regulations.

Power Lines

Most electric power lines and facilities fall within provincial jurisdiction. The Board authorizes the construction and operation of international power lines and designated interprovincial lines under federal jurisdiction.

In determining the suitability of an application, the Board reviews, among other things, the technical

feasibility of the project, its effect on adjacent provinces and its environmental impact.

Almost all provinces bordering the U.S. have interconnections with neighbouring American utilities.

Environmental Protection

The Board's environmental responsibility includes ensuring environmental protection during the planning, construction, operation and abandonment of energy projects within its jurisdiction. When making its decisions, the Board may take into consideration environmental concerns related to air, land and water pollution, disturbance of renewable and non-renewable resources, the integrity of natural habitats, the disruption of land and resource use, and the protection of landowner rights.

Companies preparing an application to the Board are usually required to anticipate the environmental issues and concerns that the proposed project could create and to discuss these with all levels of government, public interest groups, and affected landowners.

If the project application is approved, the Board ensures that the company continues to protect the environment and public health and safety by auditing and inspecting the company's construction activities, the operation of its system, and the company's routine maintenance and monitoring procedures.

Environmental Assessment

Under the NEB Act, the Board is required to consider matters of public interest as they may be affected by the granting of an application. The Board has assumed a mandate for environmental protection as a component of the public interest. The *Canadian Environmental Assessment Act* (CEA Act) provides an additional mechanism to ensure that projects receive appropriate levels of assessment before they proceed. The CEA Act sets out uniform requirements for environmental assessments by all federal government departments and agencies. As a "responsible authority" under the CEA Act, the Board ensures that appropriate environmental assessments are conducted for

projects under its jurisdiction, according to standards prescribed by the legislation.

Public Safety

Safety is a matter of primary public interest and has been included in the Board's mandate since 1959. The Board is responsible for ensuring companies comply with regulations concerning the safety of employees, the public, and the environment, as they may be affected by the design, construction, operation, maintenance and abandonment of a pipeline. For 35 years the Board has worked with the Canadian Standards Association to develop safety regulations and technical standards currently in effect for federally regulated pipelines.

In addition, through an agreement between the Board and Human Resources Development Canada, Board staff have been designated as Safety Officers for the occupational health and safety of pipeline company field staff. These health and safety duties are usually combined with other construction site and facility inspections.

Traffic, Tolls, and Tariffs

The Board regulates pipeline tolls and tariffs under its jurisdiction to ensure they are just and reasonable and that there is no undue discrimination in tariffs or services.

Pipelines under the Board's jurisdiction are divided into two groups: Group 1 consists of ten major oil and gas pipeline companies and Group 2 encompasses the remaining smaller pipeline companies. This grouping tailors the degree of financial regulation to the extent of the public interest in a company's operations. To reduce the regulatory burden on smaller companies, the Board regulates three of the Group 1 pipelines and all of the Group 2 companies on a complaint basis. Under the complaint basis of regulation, the parties are encouraged to work out any problems with the pipeline company. If this is unsuccessful, a complaint may be filed with the Board.

When establishing tolls for the Group 1 companies, the Board traditionally examines their capital and operating costs to ensure that companies shipping oil or natural

gas are protected from unjustified high transportation costs. Tolls set by the Board cover the cost of service plus a fair and reasonable return to investors.

Major toll applications normally warrant a public hearing. However, the requirement for lengthy and costly oral public hearings has been declining, in large part due to the advent of negotiated multi-year settlements. In 1995, the Board published *Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs*. The guidelines are intended to facilitate a negotiated settlement process which will allow pipeline companies, producers, shippers, consumers, governments and other interested parties to resolve toll and tariff matters through consensus building and negotiation, without resorting to a lengthy hearing process. Any negotiated settlements must still be approved by the Board. Some of the largest pipeline companies regulated by the Board have reached multi-year incentive toll settlements with their stakeholders.

In 1994/95 the Board conducted a generic multi-pipeline cost of capital proceeding. Capital structure and rate of return on common equity for some Group 1 companies are set based upon an adjustment mechanism established in this proceeding. This mechanism has also helped to reduce the requirement for hearings.

A pipeline company's tariff contains the conditions under which transportation service is provided. The tariff includes conditions on accepting new shippers, on allocating capacity to shippers and on determining which position a prospective shipper will occupy on the waiting list for service.

The Board requires that pipeline companies operate according to the principle of "open access". This means that all parties must have access to transportation on a non-discriminatory basis. In addition, tolls for services provided under similar circumstances and conditions with respect to all traffic of the same description, carried over the same route, must be the same for all customers. The Board conducts compliance audits as part of its monitoring responsibility.

The Export and Import of Energy

The Board regulates the following specific forms of energy:

Natural Gas

The export and import of natural gas is authorized by the Board under either long-term licences or short-term orders. Following a public hearing, long-term licences may be issued for up to 25 years subject to Governor in Council approval. Short-term orders for a maximum period of two years can be issued without a public hearing and do not require Governor in Council approval.

Natural gas exports occur at several major export points along the Canada/United States border. The volume exported depends upon market supply and demand as well as available pipeline capacity. Canada's imports of natural gas are relatively small, compared to its exports, and are used primarily to serve markets in southern Ontario and British Columbia.

Propane, butanes and ethane are by-products extracted from natural gas processing and refinery processing of crude oil. Board approval is required for export, usually in the form of a short-term export order. Ethylene is a compound produced by cracking ethane and does not require approval for export purposes. All four products are classified as natural gas.

The Board monitors the supply and demand of natural gas, including the performance under existing export authorizations. This ensures that the quantity of gas exported does not exceed the surplus remaining after Canadian requirements have been met.

Oil

The Board authorizes oil exports by issuing short-term orders for periods less than one year for light crude oil and less than two years for heavy crude oil. These exports occur under short-term orders due to characteristics of the oil market. The Board does not regulate oil imports.

Canada produces enough oil to meet its own needs and has been a net exporter of oil for some time;

however, oil is imported to supply both the Atlantic Provinces and Quebec. Most Canadian oil exports are to the American Midwest and Montana markets. Smaller volumes are shipped to the U.S. West and Gulf coasts.

The Board monitors the supply and demand of oil, as it does with natural gas, to ensure quantities exported do not exceed the surplus remaining after Canadian requirements have been met.

Electricity

Normally, permits are issued to export electricity without a public hearing unless the Governor in Council, after recommendation by the Board, designates a particular application for licensing or certification. The Board does not regulate electricity imports.

Issues which the Board considers when making its decisions may include the effect of exports on adjacent provinces, the environment and fair market access for Canadians.

The amount of electricity exported is influenced by several factors. First, the amount exported cannot exceed the limits set by the Board. Secondly, the weather plays an important role because approximately 70 per cent of exports are generated by hydro-electric facilities; low water levels in Canada reduce the amount of power generated and the amount available for export. Strong domestic demand can also reduce quantities available for export. Finally, the economics of export transactions influence the amount sold.

Frontier Oil and Gas Activities

The Board regulates Frontier lands and offshore areas not covered by provincial/federal management agreements.

Responsibilities include the regulation of oil and gas exploration, development and production, enhancing worker safety, and protecting the environment. Other Frontier activities include the calculation of discovered and undiscovered hydrocarbon resources, the development of emergency environmental contingency plans, and fostering

research programs which support and complement the Board's regulatory responsibilities.

Northern Pipeline Agency

The Board provides technical and administrative assistance to the Northern Pipeline Agency which, under the *Northern Pipeline Act*, has primary responsibility for overseeing the planning and construction of the Canadian portion of the proposed Alaska Natural Gas Transportation System by Foothills Pipe Lines Ltd. A Board Member serves as Administrator and Designated Officer of the Agency.

Energy Studies and Advisory Function

When required, the Board conducts studies or research into energy matters to meet its regulatory responsibilities. The Board may also hold inquiries on its own initiative, when appropriate. With this knowledge and expertise, the Board reports to and advises the Minister of Natural Resources Canada on energy issues.



The Board is Canada's federal energy regulator. Its counterpart organizations in the United States are the Federal Energy Regulatory Commission and to a lesser degree, the U.S. Departments of Energy and Transportation and the Mineral Management Service of the Department of the Interior.

At the federal level, the department of Natural Resources Canada is the government's primary source of energy policy advice. In carrying out its regulatory functions, the National Energy Board takes government energy policies into account.

Most provinces and territories have established their own energy agencies with specific mandates and responsibilities within their jurisdiction. It is expected that the territorial governments will create similar regulatory bodies once the responsibility for oil and gas regulation has been transferred to them from the federal government. The Board works together with a number of provincial and federal agencies to improve the regulatory process and is committed to exploring opportunities for further collaboration. For example, the Board is working in partnership with the Alberta Energy and Utilities Board (AEUB) on a common reserves data base for oil and gas pools in Alberta. Discussions are also underway toward a similar arrangement with the B.C. Ministry of Employment and Investment. In addition, the AEUB and the NEB have a mutual aid agreement regarding pipeline incidents and are working together on other projects to increase efficiency by developing consistent and compatible regulatory requirements. The Board also provides technical advice and assistance to the Canada-Newfoundland and Canada-Nova Scotia Offshore Petroleum Boards, Natural Resources Canada, Indian and Northern Affairs Canada, and the Government of Yukon.

The Board operates independently and maintains a policy of sharing its information and expertise. Delegations from other countries frequently visit and consult the Board about its approach to regulation and procedures. Board staff

have on occasion travelled to other countries providing information on the Board's regulatory role, the environment and other energy-related matters.

The Board continues to consult with government agencies, the energy industry and the Canadian public to simplify and improve its regulatory processes and to facilitate increased cooperation. In keeping with this consultative approach and the introduction of new technology, the Board is currently engaged in an innovative project called Electronic Regulatory Filing. This collaborative project will provide increased opportunities for standardization, flexibility and economic efficiencies while providing easier public access to the regulatory process.



For more detailed information on the energy industry or on the Board's day-to-day operations, consult the Board's Reasons for Decision following public hearings, the *Annual Report*, the quarterly *Regulatory Agenda*, and the series of Information Bulletins (listed below) published on specific topics. The Board also publishes the findings of major inquiries it conducts, as well as a variety of monthly statistics.

Information Bulletins currently available from the Board:

1. Pipeline Route Approval Procedures
2. The Public Hearing Process
3. Non-Hearing Procedures
4. How to Participate in a Public Hearing
5. The Board's Publications
6. The Regulation of Tolls and Tariffs
7. The NEB Library
8. Electric Power: A Compendium of Terms
9. Protection of the Environment
10. Pipeline Tolls and Tariffs: A Compendium of Terms
11. Frontier Information Office

Some of the Board's publications are available electronically. Contact the Board for details.

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